

JOHN HUDSPETH
FLOREINE HUDSPETH

IBLA 80-194

Decided May 29, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declining to record evidence of assessment work and deed. 38 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment --
Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: J. C. Van Voorhees, Esq., Prineville, Oregon, for appellant

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal is from a decision dated November 1, 1979, by the Oregon State Office, Bureau of Land Management (BLM), declining to accept for recordation appellants' filings received October 25, 1979, for the Grandview Mine, Fairview Mine, and Plainview Mine lode mining

claims because appellants had failed to timely file a copy of the official record of notices of location for the 3 claims. BLM held that the filing which included a Bargain and Sale Deed purporting to place title to the subject claims in appellants and an affidavit of assessment work for 1979 together with a service fee of \$15, did not comply with the requirements section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the implementing regulation, 43 CFR 3833.1-2(a). That regulation provides in relevant part:

(a) The owner of an unpatented mining claim * * * located on or before October 21, 1976, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. * * *

Appellants state these reasons for their appeal:

1. A conclusive presumption of abandonment provided by the Federal Land Policy and Management Act of 1976 (43 USC 1744) violates the United States Constitution in that it is a denial of due process guaranteed to citizens of the United States under their Constitution as well as a law which invades and affects prior existing contracts between the United States and the mining claimants.

2. The appellants' rights were violated in that the said Federal Land Policy and Management Act of 1976 did not provide for any form of prior notice to the mining claimants of the change in the law which required them to file their mining claims or subjected them to a presumption that the mining claims would be abandoned which was a violation of their rights to due process under the Federal Constitution.

[1] This Board has repeatedly held that failure to comply with the recording provisions of the regulations must result in a finding that the claim has been abandoned. The regulation at 43 CFR 3833.4 provides: "(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void" (Emphasis supplied). Glen J. McCrorey, 46 IBLA 355 (1980); Walter T. Paul, 43 IBLA 119 (1979); Dale C. DeLor, 40 IBLA 88 (1979); Roy M. Byram, 39 IBLA 32 (1979); R. Wade Holder, 35 IBLA 169 (1978). As the claims of appellants were located prior to October 21, 1976, they were obliged to file a copy of the official record of the notices of location for the 3 claims with the proper office of BLM on or before October 22, 1979.

Appellants' complaint that they were not given prior notice of the provisions of FLPMA is simply answered. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Willene Minnier, 45 IBLA (1980); Donald H. Little, 37 IBLA 1 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

As to appellants' argument that the statutory conclusive presumption of abandonment is invalid, the recording statute and regulations have been judicially reviewed and have not been found to be unconstitutional. Topa Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979). I concur in the result herein.

Joseph W. Goss
Administrative Judge

